

TEXAS SENATE NATURAL RESOURCES COMMITTEE

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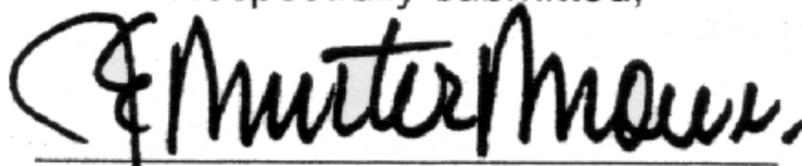
November 1, 2000

The Honorable Rick Perry
Lieutenant Governor of Texas
Members of the Texas Senate
Texas State Capitol
Austin, Texas 78701

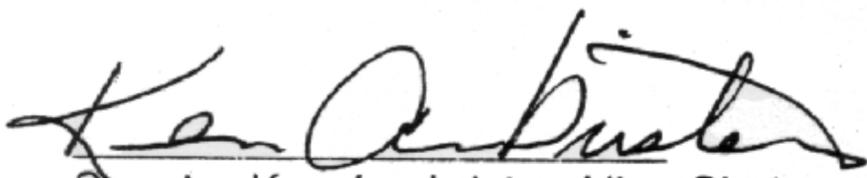
Dear Governor Perry and Fellow Members:

The Committee on Natural Resources of the Seventy-Sixth Legislature hereby submits its interim report including findings and recommendations for consideration by the Seventy-Seventh Legislature.

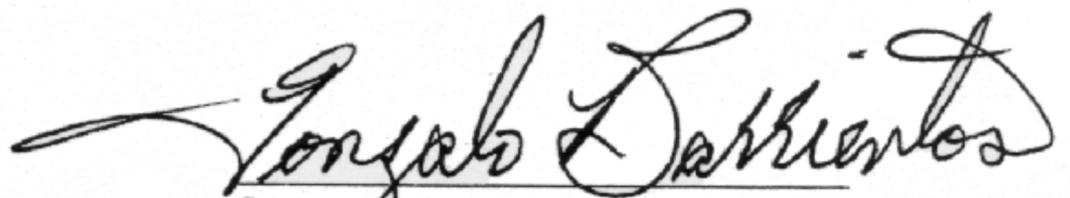
Respectfully submitted,



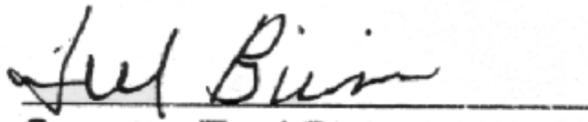
Senator J.E. "Buster" Brown, Chair



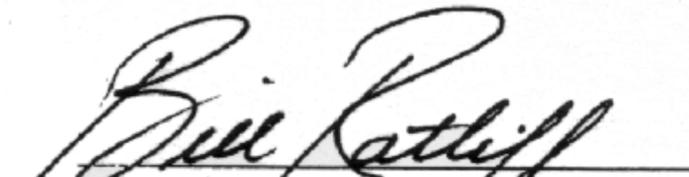
Senator Ken Armbrister, Vice-Chair



Senator Gonzalo Barrientos



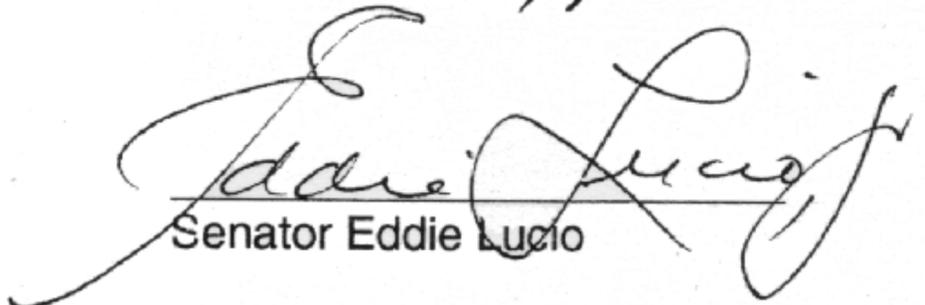
Senator Teel Bivins



Senator Bill Ratliff



Senator Tom Haywood



Senator Eddie Lucio

“WATER:

*The Globe’s Most
Precious Resource*

*The World’s Most
Pressing Problem”*

*Civilization: The Magazine of the Library of
Congress*

*“The Committee’s work will be a
springboard for an ever-evolving
study of the management and
protection of our most sacred
resource.”*

Lieutenant Governor Bob Bullock

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ACRONYMS

APCP	Aquatic Plant Control Program
CRP	Clean Rivers Program
CWA	Clean Water Act
DD	Drainage District
FWSD	Fresh Water Supply District
GCD	Groundwater Conservation District
ID	Irrigation District
LID	Levee Improvement District
MUD	Municipal Utility District
ND	Navigation District
NRCS	U.S. Department of Interior, Natural Resources Conservation Service
SUD	Special Utility District
SWCD	Stormwater Control District
TDA	Texas Department of Agriculture
TMDL	Total Maximum Daily Load
TNRCC	Texas Natural Resource Conservation Commission
TWDB	Texas Water Development Board
TPWD	Texas Parks and Wildlife Department
TSPR	Texas School Performance Review
WCID	Water Control & Improvement District

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WID

Water Improvement District

INTRODUCTION

Texas has 191,228 miles of rivers and streams, more than 6,900 reservoirs, 3 million acres of lakes, 6.47 million acres of inland wetlands, 1,991 square miles of bays, 624 miles of Gulf Coast shoreline, and 1.65 million acres of coastal wetlands. Texas ranks seventh among states in the contiguous United States in surface water acreage.¹

Water is a precious commodity, and the responsibility for managing this essential resource is a serious one. As is the case across the United States, increasingly, Texas' economic prosperity and future growth and development will be influenced by the quality and quantity of our water. Nationally, "clean water supports a \$50 billion a year water-based recreation industry, at least \$300 billion a year in coastal tourism, a \$45 billion annual commercial fishing and shell fishing industry, and hundreds of billions of dollars a year in basic manufacturing that relies on clean water."²

As the number of Texans increases -- so too do the demands on our finite water resources. And the number of Texans **is** increasing, at an all-time record rate. According to the U.S. Census Bureau, the population of Texas increased more than

¹Steve Hayward, "The Texas Index of Leading Environmental Indicators 2000," *Perspectives on Texas Public Policy* (April 17, 2000): 9.

²*Clean and Safe Water for the 21st Century: A Renewed National Commitment to Water and Wastewater Infrastructure Financing*, Report by the Water Infrastructure Network (WIN), April 12, 2000, p. ES-1.

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any other state in the nation during the 1990s, and is expected to double by 2027.³ Unfortunately, the state's supply of available water does not increase accordingly, which makes efficient and effective management of the existing water supply of critical importance.

Although state agencies have some broad statewide responsibilities relating to surface water quality and quantity -- much water management decision making occurs at the local and regional levels, by both public and private sector entities. River authorities are regional water management entities, each with its own enabling legislation, created to address the water development and planning needs of river basins. Basically, a river authority is a large water district; originally formed in order to implement major flood-control and water storage projects and to coordinate federal, state and local water resource projects within a single river basin. Thus, river authorities are one component of a multi-faceted system -- which includes federal and state agencies, local water districts, counties, cities, and private corporations -- that determines how water resources are developed, managed and used in Texas.⁴

River authorities are generally formed along watershed boundaries, as evidenced in a recent map of river authorities developed by the Texas Water Development Board. (See Figure 1.) However, a comparison of this map to a comparable map

³*State of the Texas Environment STRATEGIC PLAN: Fiscal Years 2001 - 2002/ Volume 2*, Texas Natural Resource Conservation Commission, 2000, 7.

⁴Water District and River Authority Study Committee: Report to the 70th Legislature, Volume I, (December, 1986). (hereinafter, "1986 Committee Report, Volume I.")

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of the state's 23 river basins (see Figure 2.), shows that some rivers in Texas accommodate multiple authorities.

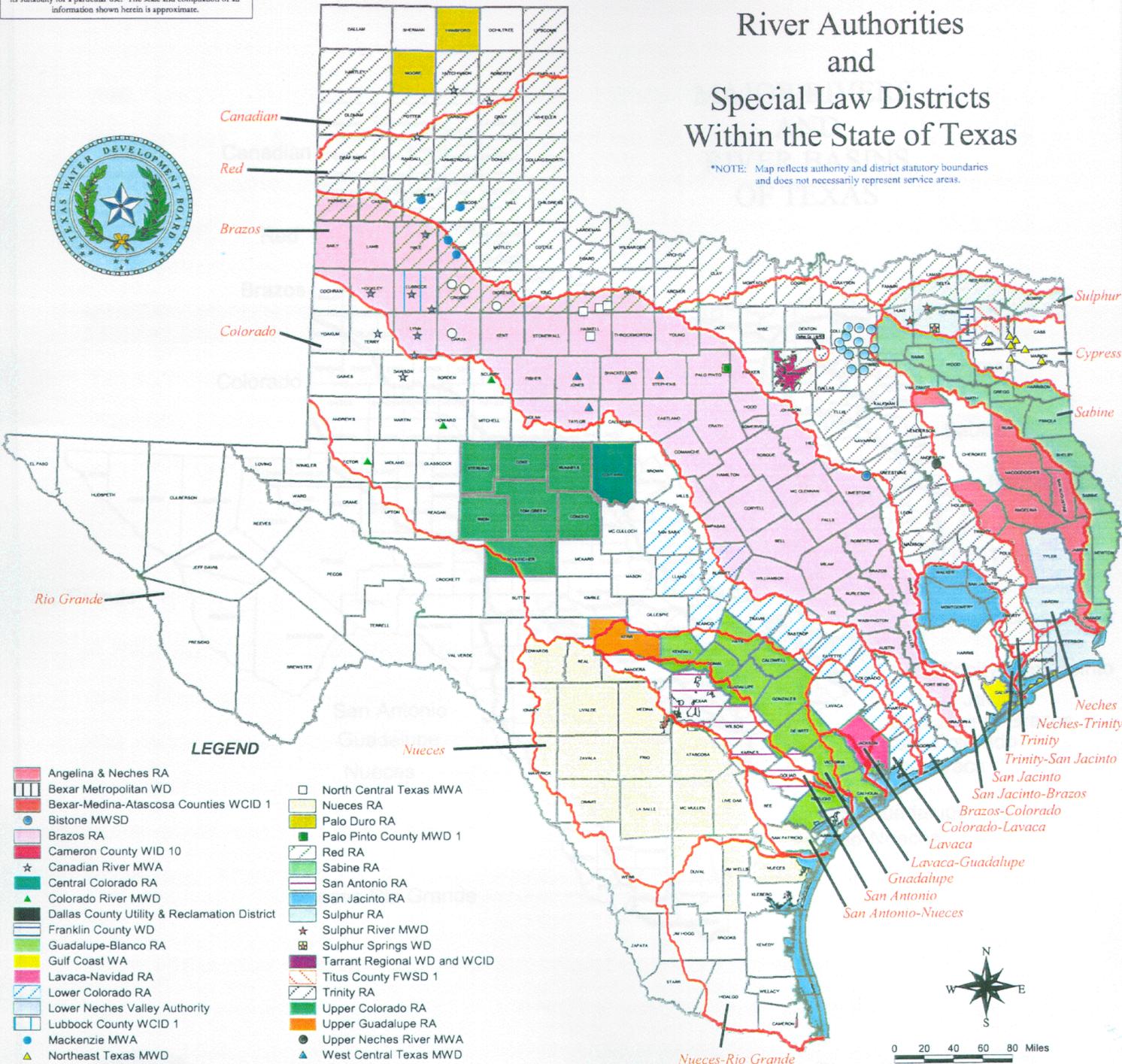
FIGURE 1

DISCLAIMER
No claims are made to the accuracy or completeness of the data or to its suitability for a particular use. The scale and compilation of all information shown herein is approximate.



River Authorities and Special Law Districts Within the State of Texas

*NOTE: Map reflects authority and district statutory boundaries and does not necessarily represent service areas.



LEGEND

- Angelina & Neches RA
- Bexar Metropolitan WD
- Bexar-Medina-Atascosa Counties WCID 1
- Bistone MWSD
- Brazos RA
- Cameron County WID 10
- Canadian River MWA
- Central Colorado RA
- Colorado River MWD
- Dallas County Utility & Reclamation District
- Franklin County WD
- Guadalupe-Blanco RA
- Gulf Coast WA
- Lavaca-Navidad RA
- Lower Colorado RA
- Lower Neches Valley Authority
- Lubbock County WCID 1
- Mackenzie MWA
- Northeast Texas MWD
- North Texas MWD
- North Central Texas MWA
- Nueces RA
- Palo Duro RA
- Palo Pinto County MWD 1
- Red RA
- Sabine RA
- San Antonio RA
- San Jacinto RA
- Sulphur RA
- Sulphur River MWD
- Sulphur Springs WD
- Tarrant Regional WD and WCID
- Titus County FWSD 1
- Trinity RA
- Upper Colorado RA
- Upper Guadalupe RA
- Upper Neches River MWA
- West Central Texas MWD
- White River MWD

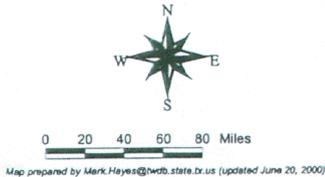


FIGURE 2

MAJOR RIVERS AND RIVER BASINS OF TEXAS



Major Rivers
River Basin Boundaries

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INTERIM CHARGE

Review the missions and roles of all Texas river authorities, including their powers and duties, financing, fee structures, service areas, board composition, relationships with other river authorities, competition with private sector service providers, communities they serve, and roles in and contributions to the state's water plan.

WHAT IS A RIVER AUTHORITY?

Texas river authorities are generally described by David Brooks, in *West's Texas Practice Series, Volume 35*. In the interest of maintaining Brooks' concise and focused compilation, the following language is taken directly from the *Texas Practice Series* 1989 edition and 2000 Pocket Part.

§ 46.29 Particular Districts -- River Authorities

A river authority is little more than an extended, multi-county water district. River authorities are authorized under the same constitutional provision which authorizes the various types of water conservation districts. The primary difference between river authorities and water districts is that the former have taken on the status of a quasi-state agency. For example, vacancies on some boards may be filled by the governor. They also control a large portion of the state's water rights.

Each of the river authorities is established and operates pursuant to its own statute, which unfortunately can be found only in the session laws....The boundaries of a river authority usually encompass the watershed of the particular river, although a

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single river may be served by more than one authority.

There are no general law provisions for the creation of “river authorities.” The term carries no special meaning and reflects the history of the state’s interest in river basins and watersheds, the dividing ridges of which have often been used for political boundaries such as county lines. River authorities, per se, are not expressly provided for in the state Constitution, which makes only oblique references to them.

There is no general purpose definition of a “river authority.” The Regional Waste Disposal Act defines a river authority as any multi-county water district created by the legislature whose governing members are appointed by the governor or the Texas Water Development Board.

The first river authority in Texas, the Brazos River Authority, was established in 1929 and comprises about one-sixth of the state’s territory. Depending upon one’s definition of a river authority, there are about twenty such regional conservation districts in Texas....

River authorities are governed by a board of directors which vary in size from three to twenty-four members depending upon the statute under which each operates. In some authorities, the board members are appointed by the governor with senate confirmation; in others, board members are elected; in two cases, board members are appointed by the Texas Water Development Board; and in still others the board members are appointed by participating cities and counties. The terms of

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appointment may vary, although one court has held that the six-year term is not unconstitutional because the board of directors of the river authority was considered to be a state board for which a six-year term is permitted. The court reasoned that a river authority was of statewide interest and board members performed duties of interest to the entire state....

Without discussing in detail each of the statutes for each of the river authorities, it is difficult to discuss their duties and authority except in very general terms.... Some river authorities have the authority to tax; some do not. All have the authority to issue revenue bonds. River authorities engage generally in water supply and distribution (primarily for irrigation), flood control, and water quality control. Others have authority to generate and sell electric power and to regulate navigation. Other important functions exercised by some include sewerage treatment and solid waste disposal.⁵

Brooks' treatise on river authorities notes a few significant additions to river authorities' legal status and responsibilities since 1989.

§ 46.29 -- Particular Districts -- River Authorities (amended in the 2000 Pocket Part)

Legislation enacted in 1991 requires a "comprehensive regional assessment of water quality in each watershed and river basin of the state." These assessments are conducted by river authorities under supervision of the Conservation

⁵David B. Brooks, "*County and Special District Law*" *West's Texas Practice Series, Volume 35*, 1989, pp. 229 - 231

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Commission. The assessment is declared to be a “continuing duty.” Assessment reports are submitted to the state every two years and the “level of detail” is determined by Conservation Commission rule. The expenses in conducting the regional assessments may be passed along proportionately to water right holders in the basin....

In an opinion that reviewed the legal terrain on the subject, the attorney general determined in 1989 that a river authority was not a state agency for purposes of representation by the attorney general and indemnification by the state of river authority personnel, but rather that a river authority occupied the same status as a county.⁶

BACKGROUND

In 1985, the 69th Texas Legislature called for the creation of a special interim committee and assigned to that committee an interim charge very similar to the river authority charge assigned to the Senate Natural Resources Committee for this interim.

At the Senate Natural Resources Committee’s “River Authority Day” Hearing in Austin, Texas on June 27, 2000, the Committee heard testimony on the 1985 Interim Study. The testimony, provided by Tom Bohl, former Committee Counsel to the 1985 interim committee, addressed the previous committee’s composition,

⁶David B. Brooks, “*County and Special District Law*” *West’s Texas Practice Series, Volume 36, Pocket Part*, 2000, pp.250, 251

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charge, report findings and recommendations, and some of the actions taken since 1985 that have addressed some of that committee's recommendations. A complete transcript of Mr. Bohl's testimony is found in Appendix A.

The 1985 Water District and River Authority Study Committee

In 1985, the 69th Texas Legislature enacted several significant changes relating to the management and regulation of water resources in the State. One of the bills passed by the 69th Legislature was House Bill 1583, which made certain river authorities subject to the Sunset Act, and the membership of their boards subject to being abolished in 1991 unless continued under the Sunset Act. Another major, related legislative initiative in 1985 was Senate Bill 249⁷, which abolished the Texas Department of Water Resources and reorganized both the Texas Water Commission and the Texas Water Development Board. Senate Bill 249 (69th Session) also created the 1985 Water District and River Authority Study Committee.⁸

The 1985 Study Committee's focus was broader than the Senate Natural Resources Committee's current interim study charge relating to river authorities, in that the earlier Committee also addressed water districts, generally, and groundwater districts and groundwater management issues. The following summary and overview of the 1985 Committee's report, however, only addresses

⁷Acts, 69th Legislature, R.S., chapter 795, effective September 1, 1985. (hereinafter referred to as "Senate Bill 249")

⁸The Committee was created under Senate Bill. 249, §2.001, et seq.

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river authority issues. Information about groundwater districts and groundwater management issues is, however, included in other reports from the Senate Natural Resources Committee to the 77th Legislature.

Senate Bill 249 provided that the Governor, the Lieutenant Governor, and the Speaker of the House each appoint certain members to the 1985 Committee from both the private and the public sectors, including representatives from the general public who had a demonstrated background in business, environmental matters, and agriculture.

1985 Committee's Charge, Findings and Recommendations:

The 1985 Committee's charge, as stated in Senate Bill 249 was to:

. . . study the various districts and authorities created under Article III, Sections 52(b) (1) and (2), and Article XVI, Section 59 of the Texas Constitution to determine if their powers and duties are appropriate for management of the states's water resources and to determine if the state's role relative to the creation and operation of those authorities should be changed.⁹

The 69th Legislature also charged the 1985 Committee to report to the 70th Legislature with recommendations as to whether water districts and river authorities should be made more accountable to the state and if so, how; and should the state

⁹Senate Bill 249, § 2.005.

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be more involved in the creation and operation of those districts and authorities.¹⁰

The 1985 Committee's report traced the history of water resource management in Texas from the late 19th Century to the 1980s and concluded that there needed to be better coordination among the state and local entities charged with water resource management. The report to the Legislature stated in part:

The **primary finding** of the Committee on which all of its recommendations are based is that the **existing system of water resource management is not appropriate to the task of providing the solutions to water resource problems** that are essential to the future of the state. The era of water **development** is over in Texas and we must change our institutional structure to respond to the future – the era of water resource **management**.¹¹ (emphasis added)

However, it is worth mentioning that in the course of the current interim study, concerns have been raised that now -- 15 years later -- the state finds itself in the position of having progressed full cycle to once again be entering an era in need of **water development**.

The following are a few of the 1985 Committee's specific recommendations. This list includes some follow-up actions that have been taken by the Legislature or by state agencies since 1985.

- The Texas Water Commission (predecessor agency to the Texas Natural

¹⁰1986 Committee Report, Volume I, page 9.

¹¹1986 Committee Report, Volume I, page 9.

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Resource Conservation Commission, or TNRCC) and the Texas Water Development Board (TWDB) should adopt uniform regulations requiring applicants for permits and financial assistance to adopt and implement reasonable conservation measures.

- The TNRCC should require all non-exempt water diversions to be metered.
Subsequent Action: Outside of the two Watermaster areas, the TNRCC does not require universal water metering.
- All Districts and Authorities should be subject to uniform rules by the State, to apply to all water rights and water quality discharge permits, which promote regional systems, conservation and environmental protection. Legislation should be enacted to clarify State authority for that purpose.
- TNRCC and TWDB should jointly appoint regional advisory committees to examine the problems in those regions of the state where appropriate.
Subsequent Action: Senate Bill 1, enacted in 1997, significantly enhanced the water planning process in Texas.
- The Legislature should create a special management oversight committee to review all water districts and river authorities, which would oversee all public interests and entities involved in water resources planning, development, management, utilization, and regulation at the local, regional, and state levels, called the "Texas Water Resources Management Oversight Committee." The Legislature should assess a fee against all entities subject

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to oversight by the Committee to pay operating and administrative costs.

Subsequent Action: This committee was not created.

- Because the Oversight Committee would provide a more continuous and effective review of districts and authorities, the current laws requiring sunset review of certain districts and authorities should be repealed. (House Bill 1583, enacted in 1985, had put certain river authorities under the Sunset Act, and the membership of their boards were subject to being abolished in 1991 unless continued under the Act.)

Subsequent Action: The river authorities' directors positions were taken out from under Sunset in 1989.

- The Legislature should require all districts and authorities to adopt policy setting standards of conduct for their employees, officials, and directors, which would require improved financial reporting. The Water Code should be amended to require that all water districts and river authorities, consistent with their enabling legislation, adopt the following:
 - A written code of ethics for all employees, officials, and directors including investment personnel.
 - Written policies on travel expenditures, investments, and procedures for professional services.
 - A uniform method of accounting and reporting on Industrial Development Bonds and Pollution Control Bonds prescribed by the State Auditor.
 - Improved budget, audit and reporting practices to ensure better use of

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management information

Subsequent Action: The substance of this recommendation was adopted in 1987¹² and is now set forth in Water Code §49.199.

CONTINUES
[CLICK HERE](#) FOR PART II OF THE REPORT